

Appln. No. 10/059,278
Amendment dated April 5, 2006
Reply of Office action of Jan. 5, 2006

REMARKS

The double patenting rejections will be addressed by amending claim 4 and submitting an appropriate terminal disclaimer upon the indication of allowable subject matter.

The rejections of the claims under 35 USC 102(e) based on the reference to Kurth, as well as the rejections under 35 USC 103(a) based on the reference to Kurth, either alone or in view of Smith or Scott are respectfully traversed.

The Examiner states:

“---Applicant---relies upon the Kurth Declaration to traverse the prior art rejection(s)---The reference (Kurth) qualifies as prior art under 35 USC 102(e) as of its filing date, regardless of whether the inventorship is correct or not---For this reason, (the) Declaration is insufficient to overcome the prior art rejections of record---”

The Examiner has missed the point of the Declaration, however, in viewing it solely in terms of the defects therein in the inventorship. The Declaration is relied upon, as noted in the previous “SUBMISSION” dated November 22, 2005 as a Declaration under 37 CFR 1.131 and not merely to attack the inventorship of the reference. Thus, the Declaration clearly states that the invention described herein was made in 1999 by applicants, a date well before the filing date of the Kurth reference (October 10, 2001).

It is difficult to imagine more incontrovertible evidence of establishment of “invention of the subject matter of ---rejected claim(s)prior to the effective date of the reference” than a Declaration by the author or applicant of the reference relied upon for the rejection.

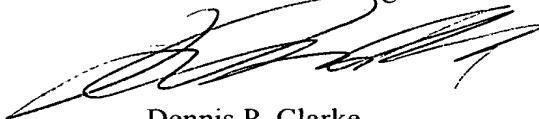
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Since applicant has, by way of the Declaration, removed Kurth as a reference with an effective date prior to the invention of the claimed subject matter, withdrawal of all of the grounds of rejection based thereon is respectfully requested.

Applicant has earnestly endeavored to place this application in condition for allowance and an early action toward that end is respectfully requested.

Respectfully submitted,

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Date: April 5, 2006

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